

**From:** [Magolske, Peter](#)  
**To:** [Marshallonis, Dino](#)  
**Cc:** [Sullivan, Jennifer](#); [Schanilec, Kevin](#); [Davies, Lynne](#)  
**Subject:** COVID DEVIATION REQUEST: Nu-West Industries  
**Date:** Wednesday, April 15, 2020 6:22:01 PM  
**Attachments:** [2020 0415 Nu West Force Majeure Notification COVID-19 Signed.pdf](#)  
[image001.jpg](#)

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Dino,

Per your April 6 email, you requested that any requests for changes or modifications to enforcement actions due to coronavirus are to be forwarded to you. (b) (5)

The attached request is a bit different.

Nu-West Industries has carried out a site investigation pursuant to an EPA Administrative Order on Consent issued under section 3013 of RCRA. The company is carrying out quarterly groundwater monitoring. Under terms of the Consent Order (paragraphs 115-117), the Respondent has the option to declare a Force Majeure event. The attached letter provides such notification to EPA.

Respondent has been conducting quarterly groundwater monitoring at the facility since at least 2014 and is requesting to forego groundwater monitoring for the second quarter of 2020. The majority of the groundwater monitoring wells were installed over the 2011 – 2014 time period. EPA therefore has a data-set that spans at least a six-year period for the majority of monitoring wells onsite.

This groundwater monitoring per the Consent Order should not be confused with National Discharge Elimination System monitoring that many regulated entities conduct in order to monitor effluent into water bodies. Nu-West Industries has no such NPDES discharge activity at this facility.

I have been the Project Manager of this RCRA 3013 Investigation since late 2009. So I am quite familiar with the site characterization data and groundwater monitoring activity that has been conducted since 2010 and am

also familiar with the historical site data going back some decades. I have been onsite on 10 or so different occasions to inspect and oversee work.

Section XI of the RCRA Consent Order establishes a "Project Coordinator", and I was officially assigned that role in late 2009. Paragraph 86 of the Consent Order requires that all communications to the Respondent be directed through or include the Project Coordinator. Paragraph 129 of the RCRA Consent Order requires that modifications in the studies, techniques, procedures, designs, work plans, or schedules utilized in carrying out this Consent Order may be made by written agreement of the Project Coordinators (EPA and the Respondent each have one).

Given my knowledge of the site, my familiarity of the monitoring data that has been collected to date, and understanding of the current pandemic health crisis, I agree with the Force Majeure request. Foregoing one quarter of monitoring data will not adversely impact EPA's understanding and knowledge of the site characterization. Our existing data-set is quite well established.

Under terms of the RCRA Consent Order, I am authorized to make modifications to work schedule changes. The Force Majeure request would fall under that rubric. I would like to respond a timely response to Nu-West Industries within the next day or two. I am happy to discuss with you, Jen, Morgan or anyone else in ECAD this request. I just don't want it to languish without a response back to the Respondent for very long.

Thanks,  
-Peter

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**From:** O'Flaherty, Rita <rkim@hunton.com>

**Sent:** Wednesday, April 15, 2020 3:31 PM

**To:** Magolske, Peter <Magolske.Peter@epa.gov>

**Cc:** 'Natalie.Creed@deq.idaho.gov' <Natalie.Creed@deq.idaho.gov>; 'Jeff Grussing' <Jeff.Grussing@nutrien.com>; 'timothy.vedder@itafos.com' <timothy.vedder@itafos.com>; 'Carlyle Miller' <Carlyle.Miller@itafos.com>; Burton, Scott <SBurton@hunton.com>; Carlstedt, Timothy J.

<TCarlstedt@hunton.com>; Davies, Lynne <Davies.Lynne@epa.gov>

**Subject:** Nu-West Industries, Inc. - Force Majeure Notification due to COVID-19

Mr. Magolske,

In accordance with the Administrative Order on Consent, this letter serves as Nu-West Industries, Inc.'s notification of a force majeure event.

Please feel free to contact our office should you have any questions.  
Thank you.



**Rita O'Flaherty**

Sr Professional Assistant

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